

APPEAL NO. 020405
FILED APRIL 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 16, 2002. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury; that the respondent (carrier) is not relieved of liability for the claimed injury with an injury date of _____, or _____, under Section 409.002, because the claimant timely notified her employer pursuant to Section 409.001; that the carrier is relieved from liability for the claimed injury with an injury date of _____, because the claimant did not timely notify the employer pursuant to Section 409.001; that there is no compensable injury, so there is no date of injury; that because the claimant did not sustain a compensable injury, the claimant did not have disability; and that the carrier did not waive the right to contest the claimed injury of _____, having timely disputed it on the basis of late notice. The claimant appealed the hearing officer's determinations that she did not sustain a compensable injury in _____, and that she did not have disability on sufficiency grounds. The carrier responded, urging affirmance. The hearing officer's determinations as to timely reporting are unappealed and have become final pursuant to Section 410.169.

DECISION

Affirmed.

The claimant testified that she sustained an injury to her right shoulder and neck while trying to lift down from overhead a 25-pound piece of frozen meat on _____, and that because of the injury she has been unable to work from _____, through the date of the hearing. The carrier presented evidence to support its assertion that the claimant did not sustain a work-related injury or have disability and that the claimant had previously sustained a right shoulder injury which was unrelated to a work injury.

The claimant had the burden to prove that she was injured in the course and scope of her employment. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission

Appeal No. 950084, decided February 28, 1995. Our review of the record reveals that the hearing officer's injury determination is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb the determination that the claimant did not sustain a compensable injury on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Terri Kay Oliver
Appeals Judge